**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL MISC.APPLICATION No. 4952 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MOTWANI GOPIDAS TOPADDAS - Applicant(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**

MR DAKSHESH MEHTA for Applicant(s) : 1,
MR MR MENGDEY, APP for Respondent(s) : 1,
MR MC BAROT for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 05/10/2007**

**ORAL JUDGMENT**

Heard learned advocate Shri D.B.Mehta for the petitioner, learned APP Mr.Mengdey for the State and Mr.Barot for respondent No.2, original-complainant.

2. This petition has been filed by the accused seeking quashing of complaint bearing C.R.No.1-268/05 filed before Kadi Police station by respondent No.2 herein.

3. In the complaint, the complainant has stated, inter alia, that he is employed as Manager in one Pooja Proteins Pvt. Ltd. On 3.4.2005, the said Company had supplied refined cottonseed oil to the petitioner for which payment was made within a period of seven days. Thereafter, also, some transactions had taken place for which also payments were received regularly till 10.5.2005. However, on 13.5.2005 and thereafter certain quantity of oil was supplied and no payment was received for 300 tins of oil. Upon being reminded on telephone, he was told by the petitioner that within two days the payment would be made. The complainant came to know from newspaper of Bhavnagar that the petitioner's proprietary concern Shri Ram Traders had cheated other traders also and had closed down the business upon the which the complainant went to Bhavnagar and upon inquiry it was found that the premise of Shri Ram Traders was locked. Other shop keepers in the neighbouring area informed him that owner of Shri Ram Traders has disappeared after taking away money of large number of traders. The complainant, therefore, contacted the petitioner at Ahmedabad. He was promised that payment would be made within a month despite which no payment was made and the owner of Shri Ram Traders

has disappeared. The complainant, therefore, stated that after giving assurance that full payment will be made, the petitioner after winning over the confidence of the complainant received goods worth Rs.6,86,363/- and cheated the company by not making the payment thereof.

4. On behalf of the petitioner, learned advocate Shri Dakshesh Mehta submitted that even if the allegations contained in the complaint are taken on face value, no offence is made out. He submitted that at best, this is a case of civil dispute and mere non-payment of dues cannot be categorized as dishonest intention or cheating on behalf of the petitioner.

5. It was further submitted that the petitioner is doing business since 10 years and had even as per the complaint been making regular payments in the past. If there is any dispute between the parties, the same has to sorted out through civil proceedings and criminal complaint is therefore required to be quashed.

6. On the other hand, learned advocate appearing for the respondents opposed the petition and requested that the same be dismissed.

7. Having heard the learned advocates appearing of the parties, I find that from the reading of the complaint, it cannot be concluded that even if

the allegations contained therein are accepted on face value, no offence is made out. From the narration of the contents of the complaint noted hereinabove, it becomes clear that at least the case of the complainant is that after having initially kept the promise of making regular payments for the oil supplied and thereby having won over the confidence of the complainant, the petitioner received larger consignment of nearly 300 tins of oil valuing more than Rs.6 lacs. Thereafter, not only did the petitioner not make the payment, but he closed down the business and disappeared.

8. By now, it is well settled that the power of the High Court for quashing the complaint at the threshold under section 482 of the Criminal Procedure Code is to be exercised in rare cases and with utmost caution and circumspection.

9. From the reading of the complaint, it cannot be said that no offence whatsoever is disclosed. Whether the petitioner has been in the business since 10 years or not and whether presently also he is operating his firm or not are issues of facts which cannot be gone into by this Court at this stage.

10. Coming to the decisions relied on by the learned advocate for the petitioner, it can be seen that in the case of **Hriday Ranjan Prasad Verma v. State of Bihar**, (2000) 4 SCC 168, it was observed by the Apex Court in para 15 that offence of cheating

depends upon an intention of the accused at the time of inducing which may be judged by subsequent conduct. In the case of **G. Sagar Suri v. State of U.P.,** (2000) 2 SCC 636 the Apex Court was considering a complaint filed in which the complainant had tried to rope in number of family members in order to coerce them to refund the amount. It was on this premise that the Apex Court found that the complainant had no occasion to prosecute the appellants who are the family members of the person who had borrowed the amount. In the case of **Ram Birji Devi v. Umesh Kumar Singh,** (2006) 6 SCC 669, the Apex Court on facts of the case came to the conclusion that from the complaint, no case under section 406, 419 and 420 of the Indian Penal Code is made out. Even in the said case, it was observed that it is a well settled proposition of law that High Court should exercise its inherent power in extreme exceptions to quash a FIR or a complaint.

11. Coming back to the facts of the present case, I do not find that it is a fit case for quashing of complaint under section 482 of the Criminal Procedure Code before the investigation is completed.

12. In the result, the petition is dismissed. Rule is discharged. Interim relief is vacated.

(Akil Kureshi, J.)

(vjn)